



Docket No. 50588/21
Digeo Ref. 42.1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Mai-lan Tomsen et al.

Confirmation No. 2513

Application No. 09/858,201

Filed: May 15, 2001

For: **SYSTEM AND METHOD FOR CABLE
OPERATOR CONTROL OVER
ENHANCED PROGRAMMING**

Group Art Unit: 2623

Examiner: Ngoc K. Vu

Date: February 19, 2007

DECLARATION UNDER 37 CFR 1.131

TO THE COMMISSIONER FOR PATENTS:

I, Kory D. Christensen, hereby declare that:

1. I prepared and filed the above-identified patent application on behalf of the assignee, Digeo, Inc.
2. On April 16, 2001, I completed a draft of the above-identified application and emailed it to James K. Okamoto, in-house patent counsel for Digeo, Inc. A copy of an email thread showing my April 16, 2001 email to Mr. Okamoto is attached as Exhibit 1.

3. On the same day, Mr. Okamoto diligently sent the draft application to the three inventors, as evidenced by the email thread of Exhibit 1. A copy of the draft application was also sent to Robert Novak, Digeo's Chief Technology Officer, for his review.

4. Within one week of receiving the draft application, Mr. Okamoto diligently provided me with his comments on April 23, 2001, as evidenced by the email thread of Exhibit 1. He indicated that he was awaiting feedback from the inventors and Robert Novak.

5. One of the inventors, Armando P. Stettner, was reviewing at least one other application at the same time, *i.e.*, U.S. Patent Application Serial No. 09/859,889, filed May 17, 2001, along with performing his many other duties at Digeo.

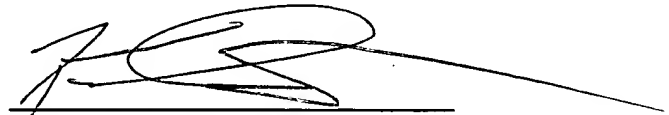
6. Another inventor, Mai-Lan Tomsen, was in the process of leaving Digeo and was on vacation for at least a portion of the time period between April 26, 2001 and May 15, 2001, as evidenced by the email message attached as Exhibit 2.

7. The following week, Mr. Novak and Mr. Okamoto exchanged emails (as evidenced by the email thread in attached Exhibit 3) regarding setting up a meeting to discuss changes to the above-identified application. Mr. Okamoto indicated that he was scheduled to be traveling, but would be willing to change his travel schedule to make the meeting and diligently complete the filing of the above-identified application. The meeting was scheduled on May 9, 2001, to accommodate the schedules of the undersigned and Mr. Novak.

8. I revised the application in accordance with the changes discussed in the May 9, 2001 meeting, and the above-identified application was filed less than one week later on May 15, 2001.

9. The undersigned respectfully submits that the applicants, the assignee, and the undersigned were, under the circumstances described above, diligently engaged in constructively reducing the invention to practice between April 26, 2001 and May 15, 2001. Any delay was attributable, *inter alia*, to obtaining and evaluating feedback from five different reviewers, scheduling a meeting between at least three parties (one of whom was traveling) to discuss changes to the application, the fact that one inventor was reviewing another application in parallel with the above-identified application, and the fact that another inventor was on vacation for at least a portion of the critical period.

10. I declare that those statements made of my own knowledge are true and that all statements made on information or belief are believed to be true. This declaration is being made knowing that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon.



Kory D. Christensen

Date: 2/19/07

Exhibit 1

Christensen, Kory

From: James Okamoto [James.Okamoto@digeo.com]
Sent: Monday, April 23, 2001 5:00 PM
To: James Okamoto; Kory Christensen
Cc: Robert Novak; Hirohisa Tachibana
Subject: RE: Digeo Ref. 42.1 (Cable Operator Contro) - Draft application

Kory--

I've done a quick review of the draft for digeo 42.1. In general, I think it looks quite good.

[REDACTED]

[REDACTED]

Let's wait to hear feedback from the inventors and Robert.

Thanks! Nice work as usual from your firm.

James

-----Original Message-----

From: James Okamoto
Sent: Monday, April 16, 2001 5:02 PM
To: Marty Behrens; Mai-lan Tomsen; Armando Stettner
Cc: Robert Novak; James Okamoto; Laura Westberg; 'christensen@mmlaw.com'
Subject: FW: Digeo Ref. 42.1 (Cable Operator Contro) - Draft application

Marty/Mai-lan/Armando--

Attached for your review and feedback is a draft patent application on MSO control over enhanced programming (triggers). Please give me your feedback to forward to outside counsel by Monday, 4/30. Let me know if you have any questions.

James

-----Original Message-----

From: Kory Christensen [mailto:christensen@mmlaw.com]
Sent: Monday, April 16, 2001 4:03 PM
To: James Okamoto (E-mail)
Subject: Digeo Ref. 42.1 (Cable Operator Contro) - Draft application

James,

Attached for review is a draft of the above-identified application. Please let me know if you have any comments or suggestions.

--Kory

Kory D. Christensen
MADSON & METCALF, P.C.
900 Gateway Tower West

Exhibit 2

> From: Gail Lindberg
> Sent: Monday, May 14, 2001 4:41 PM
> To: Rich Halbert
> Cc: Bonita Gladden
> Subject: FW: Mai-Lan Tomsen
>
> Legal needs Mai-Lan to execute some documents before her departure
> date. I know she is currently on vacation and I do not recall her return
> to work date. Can you tell Bonita when Mai-lan is expected back to work?
>
> Gail
>
> -----Original Message-----
> From: Bonita Gladden
> Sent: Monday, May 14, 2001 3:31 PM
> To: Gail Lindberg
> Cc: James Okamoto; Bonita Gladden

Exhibit 3

Christensen, Kory

From: James Okamoto [James.Okamoto@digeo.com]
Sent: Friday, May 04, 2001 11:48 AM
To: Robert Novak; James Okamoto
Cc: Kory Christensen; Bonita Gladden
Subject: RE: Digeo Patent Application 42.1 MSO Control

Will phone conference in then. I suggest teleconferencing in our outside counsel Kory Christensen as well, as his firm will be implementing the enhancements. (Hopefully, it will be easy to teleconference with both Kory in Utah and me in California.)

I'd say it is not critical to have Bonita there, although she is, of course, welcome.

James

> -----Original Message-----

> From: Robert Novak
> Sent: Friday, May 04, 2001 10:42 AM
> To: James Okamoto
> Subject: RE: Digeo Patent Application 42.1 MSO Control

>
> I think we can just take a look at this next week to strengthen the
> patent. I will have a list of suggested enhancements later today. I
> believe that if you could participate by phone, that would be OK.

> -----Original Appointment-----

> From: James Okamoto
> Sent: Friday, May 04, 2001 10:38 AM
> To: Robert Novak
> Cc: Bonita Gladden
> Subject: Tentative: Digeo Patent Application 42.1 MSO Control
> When: Wednesday, May 09, 2001 8:30 AM-9:00 AM (GMT-08:00) Pacific
> Time (US & Canada); Tijuana.
> Where: Deep Space 9

> Hi Robert,

>
> Per the previous message I just sent to you and Kory, I'm not sure
> we need to change 42.1 MSO Control that much. If it turns out the meeting
> is necessary, then I will change my travel schedule to make the meeting.

> James